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Ending enforced disappearances on the territory of the Council of Europe

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A. Draft Resolution

1. The Parliamentary Assembly deeply regrets that enforced disappearances remain even today a frequent criminal practice in the geographical area covered by the Council of Europe and all over the world. It recalls its Resolution 1371 (2004) "Disappeared persons in Belarus" and deplores the fact that the four cases of enforced disappearances examined by the Assembly in 2004 still remain unpunished. The Assembly also recalls its Resolution 2391 (2021) and Recommendation 2209 (2021) "Humanitarian consequences of the conflict between Armenia and Azerbaijan/the Nagorno Karabakh conflict". Finally, the Assembly refers to its Resolution 2324 (2020) and its Recommendation 2172 (2020) "Missing refugee and migrant children in Europe" in which it had previously expressed concern over the recent rise in cases of disappearances of migrants, especially minors.

2. The Assembly reiterates that enforced disappearances violate numerous non-derogable and essential human rights and is equally prohibited under international human rights law and international humanitarian law, regardless of the nature and qualification of the armed conflict. It reaffirms that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances and that the widespread or systematic practice of enforced disappearances constitutes a crime against humanity under general international law.
3. The Assembly recognises that the uncertainty in which the family and relatives of those missing live has a harmful psychological, social, legal and economic impact on both the relatives and the wider communities to which they

Amendment 1

Tabled by Ms Mariia MEZENTSEVA-FEDORENKO, Ms Lesia VASYLENKO, Ms Olena KHOMENKO, Ms Olena MOSHENETS, Mr Pablo HISPÁN, Mr Serhii SOBOLEV, Mr Ahmet YILDIZ, Mr Emanuelis ZINGERIS, Mr Kimmo KILJUNEN

In the draft resolution, paragraph 1, third sentence, after the words "The Assembly also recalls its" insert the following words:

"Resolution 2067 (2015) and Recommendation 2076 (2015) "Missing persons during the conflict in Ukraine", Resolution 2132 (2016) "Political consequences of the Russian aggression in Ukraine", Resolution 2133 (2016) "Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities", Resolution 2198 (2018) "Humanitarian consequences of the war in Ukraine, and"

Amendment 2

Tabled by Ms Mariia MEZENTSEVA-FEDORENKO, Ms Lesia VASYLENKO, Ms Larysa BILOZIR, Mr Oleksii GONCHARENKO, Ms Yevheniia KRAVCHUK, Ms Olena KHOMENKO, Mr Rustem UMEROV, Ms Yuliia OVCHYNNYKOVA, Ms Olena MOSHENETS

In the draft resolution, at the end of paragraph 1, insert the following sentence:

"The Assembly also expresses deep concern over the unclear fate and whereabouts of the victims of enforced disappearance in the territory of the Russian Federation and territories under Russia's effective control, including the Autonomous Republic of Crimea, the city of Sevastopol, parts of Donetsk and Luhansk regions (Ukraine)".

belong. It emphasizes that the practice of enforced disappearances is equally alarming in times of peace and during armed conflicts, but when occurring in the context of warfare it also threatens stability and prevents lasting reconciliation between the parties to a conflict, even when that conflict has long ceased.

4. The Assembly is alarmed with increasing cases of enforced disappearances in the context of armed conflicts when hors de combat captured by adversary forces are placed outside the protection of the law and disappear, instead of receiving appropriate protection under international and domestic law.
5. The Assembly notes that, despite the efforts of the international community and some local players, co-operation between the countries concerned leaves something to be desired. In addition, investigations at national level have often long been inactive. It points out that the passage of time does not prevent the identification of bodies with modern DNA-based methods.
6. The Assembly points out that, in accordance with the case-law of the European Court of Human Rights, reflected in the Guidelines adopted by the Committee of Ministers in 2011, States have an unconditional obligation to investigate all serious allegations of violations of Articles 2 and 3 of the European Convention on Human Rights (ETS No. 5, the Convention) and to punish such violations. Yet several Council of Europe reports have highlighted the slow and incomplete execution of the numerous judgments of the Court finding "procedural" violations of Article 2 on the grounds that there has been no serious investigation into enforced disappearances in several States, particularly in the North Caucasus region in the Russian Federation..
7. The Assembly welcomes the entry into force, on 23 December 2010, of the International Convention for the Protection of All Persons from Enforced Disappearance (CED), which codifies the fundamental principles of action against enforced disappearances. The Committee on Enforced Disappearances created by the CED has a power of injunction, under the urgent action procedure, and may receive "communications" from individuals or another State against States Parties who have made a declaration under Articles 31 and 32.
8. The Assembly considers that the CED, in conjunction with the Working Group on Enforced or Involuntary Disappearance (WGEID) and also the International Commission on Missing Persons (ICMP), the International Committee of the Red Cross (ICRC), regional mechanisms such as the Committee on Missing Persons (CMP) in Cyprus and the European Court of Human Rights case law form a well developed institutional and normative framework. Rather than adding a new convention at the level of the Council of Europe, steps should be taken to reinforce the existing legal framework, and better implement the good practices recommended in those instruments in all the member States.
9. The Assembly also stresses the importance of the role of civil society in this area, and in particular the strong solidarity and vital psychosocial support provided by the

associations of families of missing persons. These deserve all the moral and financial support that the international community can provide, and they must be protected against pressure exerted by certain States.

10. The Assembly believes that the Council of Europe and its member and observer States must play a major role in this context. European States should exert their influence at international level and set a good example, by ratifying the CED and effectively implementing the preventive and repressive measures provided for in the aforementioned instruments, in national legislation and practice. The Council of Europe should support its member States in this endeavour, by co-ordinating efforts and providing the necessary technical support.
11. The Assembly therefore invites all the member and observers States not yet having done so to:
 - 11.1. sign and ratify the CED and make declarations under Articles 31 and 32, enabling the Committee on Enforced Disappearances to examine individual and inter-State communications, and promote universal ratification of this convention, inter alia by joining the Group of Friends of the CED launched by France, Argentina and Morocco or by setting up a Group of European Friends of the CED;
 - 11.2. implement the preventive and repressive measures recommended in the CED, including while ratification of this instrument is pending, inter alia by:
 - 11.2.1. making the crime of enforced disappearance a stand-alone offence within their national criminal legislation and providing for sanctions commensurate with the extreme seriousness of the crime;
 - 11.2.2. introducing an effective means of habeas corpus;

Amendment 3

Tabled by Ms Mariia MEZENTSEVA-FEDORENKO, Ms Lesia VASYLENKO, Ms Larysa BILOZIR, Mr Oleksii GONCHARENKO, Ms Yevheniia KRAVCHUK, Ms Olena KHOMENKO, Mr Rustem UMEROV, Ms Yuliia OVCHYNNYKOVA, Ms Olena MOSHENETS

In the draft resolution, paragraph 11.2.1, after the words "stand-alone offence", insert the words:

" , defined in accordance with the CED, "

Amendment 4

Tabled by Ms Mariia MEZENTSEVA-FEDORENKO, Ms Lesia VASYLENKO, Ms Larysa BILOZIR, Mr Oleksii GONCHARENKO, Ms Yevheniia KRAVCHUK, Ms Olena KHOMENKO, Mr Rustem UMEROV, Ms Yuliia OVCHYNNYKOVA, Ms Olena MOSHENETS

In the draft resolution, replace paragraph 11.2.2 with the following paragraph:

"ensuring that the statute of limitations, if applied in respect of enforced disappearance, is long and proportionate to the extreme seriousness of this offence, and takes into account its continuous nature;"

- 11.2.3. undertaking measures to prevent cases of enforced disappearance based on racial or any other form of discrimination and duly investigating them;
- 11.2.4. providing effective measures to identify perpetrators of enforced disappearance;
- 11.2.5. creating centralised detention registers;
- 11.2.6. making prison release protocols mandatory;
- 11.2.7. prohibiting secret and incommunicado detention and clandestine detention centres;
- 11.2.8. establishing protocols for documenting unidentified human remains;
- 11.2.9. avoiding sending people back to countries where they risk becoming victims of enforced disappearances;
- 11.2.10. providing suitable training for members of the security and armed forces;
- 11.2.11. ensuring that their laws on adoption do not provide a means of gaining control over missing children or children of missing persons;
- 11.3. join the ICMP or support it in another way in its efforts to provide technical assistance to any States requiring it;
- 11.4. sign and ratify the optional protocol to the Convention against Torture (OP-CAT) and the Rome Statute of the International Criminal Court, which cover certain aspects of the crime of enforced disappearance.
12. The Assembly also invites all the Council of Europe's member States and, where applicable, observer States to:
 - 12.1. co-operate with one another in criminal investigations into disappearances, using the relevant conventions of the Council of Europe;
 - 12.2. declassify documents and make available all relevant information conducive to locating mass graves and clarifying the fate of missing persons;
 - 12.3. make the greatest possible use of the universal jurisdiction authorised inter alia by the CED, the Convention against torture and the Rome Statute, to prosecute the perpetrators of crimes of enforced disappearance committed in other countries;
 - 12.4. place special emphasis on execution of the Court's judgments relating to cases of enforced disappearances, and relevant provisional measures indicated by the Court, taking all the individual and general measures required to resolve the cases concerned and prevent further cases arising;
 - 12.5. protect associations of families of missing persons from any threats and provide them with financial backing in their efforts to sustain mutual psychosocial support, combat impunity and promote remembrance;

Amendment 5

**Tabled by Ms Mariia MEZENTSEVA-
FEDORENKO, Ms Lesia VASYLENKO, Ms
Larysa BILOZIR, Mr Oleksii GONCHARENKO,
Ms Yevheniia KRAVCHUK, Ms Olena**

KHOMENKO, Mr Rustem UMEROV, Ms Yuliia OVCHYNNYKOVA, Ms Olena MOSHENETS

In the draft resolution, after paragraph 12.5, insert the following paragraph:

"impose sanctions against state bodies, state-controlled groups and individuals implicated in the cases of enforced disappearance in the territories of the Council of Europe's member States or which are obstructing effective investigation into such cases;"

- 12.6. support the idea of holding a world conference in 2022 on the topic of enforced disappearances, which would also provide an opportunity for States to announce new ratifications of the CED.

B. Draft Recommendation

1. The Parliamentary Assembly refers to its Resolution ... (2022) "Ending enforced disappearances on the territory of the Council of Europe" and stresses how crucially important it is for human rights and the rule of law that fresh impetus be given to international efforts to put an end to enforced disappearances in Europe and elsewhere in the world.
2. With this aim in mind, the Assembly recommends that the Committee of Ministers:
 - 2.1. promote ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (CED) by all the Council of Europe's member States and recognition of the full competence of the Committee on Enforced Disappearances as well as the transposition into national legislation of all the preventive and repressive measures foreseen by the CED;
 - 2.2. provide technical assistance, with the co-operation of the States that are already parties to the CED, to all interested States in order to help them implement the CED, on the basis of in-depth analysis of the existing legislation of the States concerned;
 - 2.3. set up, within the Council of Europe, a task force on enforced disappearances responsible for co-ordinating the aforementioned activities and monitoring the progress of legal protection against this crime in the Council of Europe's member States and fostering better prevention, with the involvement of civil society;
 - 2.4. place special emphasis on execution of the judgments of the European Court of Human Rights relating to cases of enforced disappearances as well as to the implementation of the relevant provisional measures indicated by the European Court of Human Rights;
- 2.5. support the idea of holding a world conference on the topic of enforced disappearances, which would also provide an opportunity for States to announce new ratifications of the CED.

Amendment 6

Tabled by Ms Mariia MEZENTSEVA-FEDORENKO, Ms Lesia VASYLENKO, Ms Larysa BILOZIR, Mr Oleksii GONCHARENKO, Ms Yevheniia KRAVCHUK, Ms Olena KHOMENKO, Mr Rustem UMEROV, Ms Yuliia OVCHYNNYKOVA, Ms Olena MOSHENETS

In the draft recommendation, after paragraph 2.4, insert the following paragraph:

"encourage member States to impose sanctions against state bodies, state-controlled groups and individuals implicated in the cases of enforced disappearance in the territories of the Council of Europe's member States or which are obstructing effective investigation into such cases;"